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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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4 MARK NUNEZ, et al.,

5 v. Plaintiffs,

6 CITY OF NEW YORK, et al., 11 Cv. 5845 (LTS)

7 Defendants.

8 Remote Conference

9 December 2, 2021
10 10:00 a.m.

11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 Chief Judge

14 APPEARANCES

15 THE LEGAL AID SOCIETY
16 Attorneys for Plaintiff Class
17 BY: MARY LYNNE WERLWAS
18 KAYLA SIMPSON
19 DAVID BILLINGSLEY

20 EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
21 Attorneys for Plaintiff Class
22 BY: JONATHAN S. ABADY
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1 APPEARANCES (Continued)

2 GEORGIA PESTANA

3 Corporation Counsel of the City of New York

4 BY: KIMBERLY JOYCE

5 Assistant Corporation Counsel

6 STEVE J. MARTIN

7 Court Monitor

8 ANNA E. FRIEDBERG

9 Deputy Court Monitor

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(The Court and parties appearing by videoconference)

(Case called)

THE COURT: I would now ask the video participants who will be speaking for the parties and the monitor to introduce themselves, to state their appearances, beginning with the monitor.

MR. MARTIN: Good morning, your Honor. My name is Steve J. Martin, court monitor, in the matter of *Nunez v. City of New York*.

THE COURT: Good morning, Mr. Martin.

The deputy monitor.

MS. FRIEDBERG: Good morning, your Honor. My name is Anna E. Friedberg, and I am the deputy monitor on the monitoring team.

THE COURT: Good morning, Ms. Friedberg.

Counsel for plaintiffs.

MS. WERLWAS: Good morning, your Honor. Mary Lynne Werlwås, from the Prisoners Rights Project of the Legal Aid Society, for the plaintiff class.

THE COURT: Good morning, Ms. Werlwais.

Counsel for the U.S. Attorney's Office, for the government.

MR. POWELL: Good morning, your Honor. Jeffrey Powell with the U.S. Attorney's Office.

THE COURT: Good morning, Mr. Powell.

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1 Counsel for the defendants.

2 MS. JOYCE: Good morning, your Honor. This is
3 Kimberly Joyce for the City of New York and the defendants.

4 THE COURT: Good morning, Ms. Joyce.

5 I greet other counsel, members of the press, and
6 members of the public who may be listening in since this is a
7 public proceeding. And I would ask that all who are listening
8 in keep their phones muted. And I would ask that the video
9 participants also keep themselves muted when they are not
10 speaking.

11 I remind everyone that as provided in the Court's
12 January 19, 2021 standing order, neither recording nor
13 retransmission of any part of this conference is permitted.

14 I will be calling on each speaker during the
15 conference. Each time that you speak, please identify yourself
16 by name for clarity of the record and for the benefit of those
17 who only have audio access. Please don't interrupt each other
18 or me during the conference. If we interrupt each other, it's
19 difficult to create an accurate transcript. But having said
20 that, and as usual, I apologize for breaking the rule because I
21 may interrupt if I have questions.

22 I will give the attorneys an opportunity to make
23 additional comments or ask questions at the end of the
24 conference, but if anyone has difficulty hearing me or another
25 participant, please say something right away.

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1 Since the emergency conference in September, the
2 monitoring team, the city and the department have been working
3 at pace to address the issues the monitor has highlighted in
4 its recent status reports. The monitoring team has reported
5 that the work to date has resulted in some gains, and the Court
6 expresses its appreciation to the monitoring team and the
7 parties for their diligent efforts in addressing the severe
8 conditions in the city jails. The Court expects to hear more
9 today about what has changed, what hasn't, and the specific
10 steps that are being taken to improve safety and ensure humane
11 conditions.

12 Today's conference was scheduled to discuss the
13 defendants' efforts to implement the monitoring team's
14 recommendations included in the second remedial order, which is
15 docket entry number 398, and the city's ongoing initiatives
16 included in Appendix A to the monitoring team's September 23,
17 2021 report, which is docket entry number 404.

18 The monitor has submitted status reports setting forth
19 the stages of implementation of these recommendations and
20 initiatives, which can be found at docket entries 403 and 420.

21 The defendants submitted a status report detailing
22 their efforts to implement the ongoing initiatives articulated
23 in Appendix A, and that is at docket entry number 404.

24 In addition, the parties proposed, and the Court
25 adopted, a third remedial order focusing on ensuring timely

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1 accountabilities for use-of-force violations and addressing a
2 substantial backlog in proceedings concerning use-of-force
3 violations. That is at docket entry number 424.

4 The Court has attended carefully to these reports as
5 they have come in.

6 I would like to begin by asking the monitor for a
7 general status update on current conditions and areas of focus
8 from their perspective.

9 MR. MARTIN: Thank you, your Honor. This is Steve
10 Martin. In order to conserve the Court's time, and hopefully
11 to make my remarks more measured and thoughtful, I have
12 prepared a statement that I will read, if it's all right with
13 the Court.

14 THE COURT: Yes.

15 MR. MARTIN: Thank you, your Honor.

16 The downward spiral toward patently unsafe conditions
17 in DOC that brought us before the Court in late September has
18 been to some degree ameliorated by measures taken by the
19 governor's office, city officials, and, most importantly, the
20 Department of Corrections. To varying degrees these measures
21 have diminished the dire conditions set out before the Court on
22 September the 24th. This is not to say that the very serious
23 issues of unsafe conditions have been eliminated. Make no
24 mistake, much remains to be done to render safe living
25 conditions to both staff and detainees in the DOC.

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1 During my presentation before your Honor on September
2 the 24th, I spoke of the need to move toward "a
3 back-to-basics/corrections 101" approach to managing detainees.
4 I also talked of the importance of managing immediately
5 dangerous detainees after they have engaged in seriously
6 assaultive behaviors. I then advocated for the infusion of
7 correctional management expertise into the system to accelerate
8 a move toward sound correctional practices. Allow me to now
9 report out DOC's movement towards these aims.

10 We recommended a series of interim security measures
11 or a back-to-basics approach. The department has issued
12 directives on staff remaining on posts, they have reinstated
13 roll call with emphasis on door security, they have instituted
14 suspensions for officers who have abandoned posts during
15 assaults on other detainees, they have mandated strict
16 adherence to restraint practices for seriously assaultive
17 offenders, they have reiterated policies related to security
18 inspections, they have instituted directives on limiting
19 detainees access to secure areas, and they have instituted
20 safeguards on key control and other security equipment that too
21 often fall into the hands of detainees. Can I attest that
22 these measures are bearing fruit? No. But I can attest it is
23 a start.

24 Let me now return to another issue of great importance
25 of harm to the plaintiff class detainees -- intake. There is

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1 no question that the new admission intake process was broken.
2 Conditions were clearly inhumane. The DOC moved the new
3 admissions process to the Eric M. Taylor facility, or EMTC, as
4 it is called. This move almost immediately ameliorated the
5 dire conditions. Is the new admissions process cured? No.
6 But this move clearly eliminated pervasive harm. Are some
7 detainees not processed within 24 hours? Yes. But they are
8 far fewer than what we saw at the time of the hearing. Are
9 there still processing issues remaining? Yes. But we are
10 pressing DOC to address them.

11 Another issue of safety and harm was the DOC's
12 management of detainees who engage in serious acts of violence
13 toward other inmates. We refer to this as post-incident
14 management. In other words, what do you do with detainees in
15 the immediate aftermath of them harming other detainees? We
16 cited incidents in reports to the Court that DOC was not
17 properly managing such detainees; in other words, they were
18 left to reengage in further acts of violence. Since September,
19 a specific protocol was developed and put into place to manage
20 such offenders. A very able member of the DOC Nunez compliance
21 team has monitored vigorously the implementation of this
22 protocol and meets frequently with executive staff to guide
23 their implementation of the protocol. Again, are there
24 problems with this protocol? Yes. But the agency is now aware
25 of their obligation to manage these offenders. Heretofore,

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1 they were basically left unchecked in some instances to engage
2 in further acts of violence.

3 A final word on specific issues. My office
4 recommended the retention of a recognized expert on strategies
5 to manage detainees with gang affiliations. They are presently
6 in the process of retaining such an expert who is a recognized
7 leader in offender classification. I can attest that he will
8 bring much needed expertise to DOC on this issue.

9 I will now defer to the deputy court monitor to add
10 detail to other critical areas of DOC's efforts to move toward
11 improving the safe operation of the New York City jails and to
12 outline our recommendations for a path forward.

13 THE COURT: Thank you, Mr. Martin.

14 Ms. Friedberg.

15 MS. FRIEDBERG: Good morning, your Honor. My name is
16 Anna Friedberg.

17 Following up on Mr. Martin's statement, I wanted to
18 walk through where we go from here. How and why did we get
19 here and where do we go? We have spent probably the last six
20 years thinking through that, the last 100 days since we first
21 sent this status report in August of this year, and the last 60
22 days in which both the second and third remedial orders have
23 been entered by the Court.

24 There were three guiding principles as we started to
25 think through how best to recommend moving forward. The first

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1 is that we really strongly believe that change must come from
2 within the agency itself. Those that work within the
3 department have to be empowered to change and fix it. Of
4 course, they are going to need support in doing that, and that
5 reinforces two of the recommendations that the monitoring team
6 made both at the end of the eleventh monitoring period and
7 throughout this period now. One is the expansion of the
8 criteria in which the department can obtain wardens such that
9 they can recruit and identify individuals to serve in these
10 leadership roles that do not necessarily come up through the
11 uniform rank. The second is the potential appointment of a
12 security operations manager who can help serve and mentor those
13 staff and set the new expectations of what is necessary.

14 The second is that we need to focus on certain
15 foundational issues. And those must be prioritized before we
16 move forward trying to address the plethora of requirements in
17 the consent judgment and the three remedial orders. I will get
18 to those in a second, but I just raise that, as we thought
19 forward, we had to identify what is achievable and what can be
20 done to build the foundation upon which the department can
21 continue to improve and have sustainable reform.

22 Finally, we recognize that reasonable expectations
23 must be set, such that we understand perfection is not
24 ultimately the goal here, but a realistic approach to what can
25 be achieved. That really drove the monitoring team to think

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1 through how do we get where we need to go? That identified yet
2 another list, that is, the foundational issues that we think
3 really need to be built in order for us to move forward. Those
4 four are:

5 Security practices and procedures are deeply flawed.

6 They must be addressed.

7 Second, the inadequate supervision of line staff as
8 well as the inadequate expertise that they have in which to
9 guide those staff in doing what they must do and get
10 back-to-basic corrections 101, as Mr. Martin spoke about
11 earlier.

12 The third is with respect to the department's staffing
13 practices and procedures and the ineffective deployment of
14 staff throughout the agency.

15 The fourth is limited and extremely delayed
16 accountability for staff misconduct.

17 I will take each of those in turn very quickly.

18 With respect to staffing practices and procedures, I
19 already briefly noted that we have made recommendations with
20 respect to both the expansion of the criteria for facility
21 leadership and a security operations manager. Mr. Martin also
22 spoke about some of the interim security plans already
23 underway. Those certainly will need to be expanded and become
24 in line with many of the initiatives outlined in the first
25 remedial order. We will talk through each of those as we walk

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1 through the conference later, so that's just a preview on that
2 particular item.

3 With respect to staffing practices, the monitoring
4 team has initiated a staffing analysis, which, again, I am
5 happy to go into a little bit more detail as we go through the
6 conference, but we recommend that that work is done in order to
7 determine how best to deploy staff.

8 Then, finally, the practices with respect to imposing
9 timely discipline must be revised and reworked. That work has
10 been outlined in the third remedial order, which was signed
11 very recently by the Court, and that work has already begun
12 with the monitoring team and the department and time is now
13 necessary for us to work forward.

14 So that's just an outline of where we think we need to
15 go to move forward, and we expect that in the coming weeks,
16 months, that will be where we spend our time and focus with the
17 department.

18 I look forward to any questions you may have or any
19 other information you require from us, your Honor.

20 THE COURT: Thank you, Ms. Friedberg.

21 I will first hear the status statements from the other
22 parties, starting with counsel for the city.

23 Ms. Joyce.

24 MS. JOYCE: Yes, your Honor. Good morning.

25 I also prepared a brief written statement that I will

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1 read. I know Mr. Martin and Ms. Friedberg have covered some
2 ground already and I am not sure how specific the Court wants
3 me to get, so I will read this and then I welcome any
4 questions.

5 Good morning, your Honor. The department, the city,
6 in collaboration with the monitoring team, have been working
7 tirelessly to improve conditions for the people incarcerated at
8 department facilities and for the officers who continue to come
9 to work every day despite the challenges they face. While
10 there is much work to be done, and we are committed to that
11 work, there have been improvements that give hope that the
12 conditions that gave rise to the monitoring team writing the
13 Court over the summer are moving in the right direction. We
14 are committed to continuing our collaborative and transparent
15 relationship with the monitor and the monitoring team as we
16 work to tackle these challenges.

17 Early indicators are that violence and use-of-force
18 data are bending in the right direction, as the population
19 declines, with fewer unstaffed posts and fewer triple shifts
20 for officers. The department and the city made great efforts
21 to decrease the detainee population, which is down from about
22 6,000 detainees in September to about 5200 currently. There
23 have also been declines in triple shifts, in AWOLs, absent
24 without leave, and then the number of unstaffed posts. And we
25 anticipate seeing greater declines in those areas in the coming

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1 weeks and months.

2 The mayor additionally signed two executive emergency
3 orders. One on September 15, which now I cannot recall if that
4 was before or after our last conference. I apologize.

5 THE COURT: That would have been before the last
6 conference.

7 MS. JOYCE: That emergency order, your Honor, covered
8 AWOLs and suspensions of staff without pay for 30 days, it
9 concerned improving the sick leave policies, it allowed NYPD to
10 take over court operations, and it suspended certain
11 procurement rules and regulations so that the department could
12 hire certain staff without having to go through the city's
13 procurement procedures.

14 This past week's executive order also allowed the
15 department to amend its tour schedules, going to 12-hour tours,
16 which we believe will alleviate the triple shifts and overtime.
17 This is just a short-term solution to the problem that we
18 believe is going to bear fruit.

19 Finally, the department has new staff beginning in
20 late December as well as mid-January, with a new entry class at
21 the academy beginning in March of 2022. While the size of that
22 class is unclear, 1600 people passed the test needed to enter
23 the academy, so that will be the outer limit of what the class
24 size is. So six months from then, in August or September of
25 2022, you should therefore have another class of officers

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1 beginning at the academy.

2 Since the last conference also, in the efforts to
3 decrease the population, the department has transferred the
4 women from the Rose M. Singer Center to the Bedford Hills
5 Correctional Facility in Westchester, New York, and has ensured
6 that services are continuing for the women that are at that
7 facility. And that was an effort to help decrease the
8 population.

9 So, your Honor, I know that Mr. Martin and Ms.
10 Friedberg talked about the efforts to improve security so I
11 don't want to retread ground there, but that is essentially
12 where we are at this moment. We are continuing the
13 relationship with the monitoring team. We are being as
14 transparent as possible. We are working, and when I say "we,"
15 I mean the department are working very hard, in very
16 challenging circumstances, and we will continue to work hard to
17 improve the lives of those who live on Rikers Island and who
18 work there.

19 And I welcome any questions from the Court or the
20 monitoring team when you feel appropriate.

21 THE COURT: I will just ask you one now.

22 What are you able to say about the status of the
23 response to the recommendations to bring in outside expertise?

24 MS. JOYCE: When you say outside expertise, do you
25 mean contract staff or actual wardens or above at the

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1 department?

2 THE COURT: I understand that there are two issues.
3 So one is being able to bring people in as wardens. Well, I
4 guess three issues. Then there is a classification consultant
5 recommendation, and a person to come on staff as the security
6 operations manager. I referred to them all as outside because
7 they presume people coming in from outside of current staff and
8 regular channels.

9 MS. JOYCE: Yes, your Honor.

10 So as Mr. Martin and Ms. Friedberg indicated, we are
11 in the process of retaining the two experts, the classification
12 expert and the security operations manager expert.

13 Ms. Friedberg, correct me if I am misspeaking.

14 MS. FRIEDBERG: I'm sorry. Say that again.

15 MS. JOYCE: I just wanted to say that the department,
16 in terms of the classification expert, we are in the process of
17 retaining that person, and we are in agreement with the
18 security operations manager. So it's just in terms of getting
19 those two people on board.

20 MS. FRIEDBERG: With respect to the classification
21 expert, that is true. My understanding from my work with the
22 department is that they have begun working with him. I think
23 there may be some contractual issues, but I think otherwise
24 that work has started at least in earnest.

25 With respect to the security operations manager, the

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1 department has been engaging with the monitoring team to
2 determine the contours of what that role has been. It has been
3 an active engagement between the monitor, myself, and both the
4 commissioner and other high-ranking officials within the
5 department. As to what that role exactly looks like, we are
6 not yet certain, whether it might be one individual or a team
7 of people.

8 So that's just the only caveat I would share, is that
9 those discussions are still ongoing with respect to exactly how
10 that role will work. But that work has been ongoing and, in
11 fact, was subject to discussions that the monitor and I had
12 with the commissioner as early as yesterday, or as late as
13 yesterday. So that work continues, but it is one that cannot
14 be entered into lightly. So we have been giving it a lot of
15 thought with respect to what that role would look like, what
16 their responsibilities would be, and what would their areas of
17 focus be, both within the agency itself and the specific topic
18 areas that they may be covering.

19 THE COURT: So do I correctly understand, then, that
20 someone has been identified for the classification expert role
21 and is beginning to work with the department even while the
22 formalities of the role are being attended to; is that correct?

23 MS. FRIEDBERG: Yes, your Honor. Mr. James Austin has
24 been selected. We actually recently modified the remedial
25 order to reflect the fact that he has been selected, and the

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1 department consulted with the monitor prior to that
2 determination, and that work has started.

3 THE COURT: Thank you.

4 As to the security operations manager, it is still in
5 the stage of defining the role and not in the stage of
6 identifying a specific person or people to occupy that role;
7 would that be correct?

8 MS. FRIEDBERG: Maybe a slight modification, your
9 Honor. It's somewhat of a simultaneous discussion. There have
10 been particular individuals under consideration, but that
11 partly relates to what the responsibilities would be. So it's
12 a little bit of a -- it has to be a parallel track of
13 discussion. And ultimately we anticipate that we also will be
14 needing to consult with the plaintiff class and the U.S.
15 Attorney's Office on this as well. We just have not been able
16 to develop a full package yet to get there, but those
17 discussions are ongoing, both in considering potential
18 individuals for the role as well as what that role would
19 entail. What the role entails may determine who the person is.
20 Who the person is may impact some of the responsibilities as
21 well. So that's why it's being done a little bit in tandem
22 right now.

23 THE COURT: Thank you.

24 Ms. Joyce, I think you were beginning to speak and I
25 cut you off, so please.

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1 MS. JOYCE: No, that's fine. I was just going to
2 confirm that the classification consultant has the contract in
3 hand, it's almost finalized, and he is already receiving data.
4 So he is, in fact, working even though some of the logistical
5 things have not yet been finalized.

6 THE COURT: Thank you, Ms. Joyce. That's all I had
7 for you by way of questions at this stage. Is there anything
8 else you wanted to say at this point?

9 MS. JOYCE: Not at this moment, your Honor. Thank
10 you.

11 THE COURT: Thank you, Ms. Joyce.

12 So I will turn now to counsel for the government.

13 Mr. Powell.

14 MR. POWELL: Good morning, your Honor. It's Jeffrey
15 Powell for the government.

16 Just some brief words to start. The government
17 obviously remains extremely concerned about the ongoing
18 extraordinary level of violence and disorder at the jails, the
19 ongoing alarming high staff absenteeism rates which have shown
20 little improvement over the last couple of months -- and I will
21 talk about that in a second -- and the ongoing failure, the
22 recognized failure, to comply with core provisions of the
23 consent judgment and the remedial orders recently entered.

24 The department's failure to follow basic security
25 protocols, competently manage its line staff, and adequately

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1 supervise detainees, as has been documented in detail in the
2 monitors' many thorough reports, continues to create an unsafe
3 environment and an ongoing imminent risk of harm for inmates as
4 well as department staff and anyone who has to work or be in
5 the jails.

6 We understand that some improvement has been made
7 recently, but we would like to bring the Court's attention to
8 certain data that makes it clear how much work still needs to
9 be done.

10 Our understanding, based on the information we have
11 from the monitor and recent data reported, is that the rate of
12 use of force in the jails is higher than it has ever been.
13 Just since September alone, there were 728 use-of-force
14 incidents. The rate of force is multiples of what it was when
15 this consent judgment was entered in 2015, where there were
16 unconstitutional conditions at the facility. The rate of
17 inmate-on-inmate fights is higher than it's ever been. The
18 rate of stabbings and slashings is higher than it's ever been.
19 According to the data we had, there were 51 stabbings or
20 slashings in the jails in September alone.

21 Some words have been said about absenteeism and we
22 understand the department has made efforts and has suspended
23 many folks for being AWOL, but the data shows little
24 improvement in the numbers. It has been consistent and the
25 recent data we have, it goes all the way through November 25.

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1 It still remains that about 30 percent of the uniform staff at
2 the department are out sick on any given day, AWOL, or on
3 medically restricted status where they can't interact with
4 inmates. The numbers have moved a little bit in the 30 percent
5 range day-to-day, but they are pretty constant from what they
6 were when we were before your Honor back in September.

7 On November 25, according to the data reported by the
8 city, of the 8,051 uniform staff, 1523 were out sick, 818 were
9 on medical restricted status, and 50 were AWOL. This has led
10 to a high number of unmanned shifts, where at a post there will
11 be no uniform staff assigned to a post at all for a shift.
12 Those numbers have gone up and down a little bit over the last
13 couple of months, but on multiple occasions there were over 100
14 unmanned posts in the city jail system in October.

15 There have also continued to be double and triple
16 shifts that have been way too frequent, and it is just too much
17 to ask of a correction officer to manage inmates in a safe way
18 working 16, 24 hours at a time. I understand the city has
19 shifted to a 12-hour work shift in light of the vaccine mandate
20 and the staffing challenges, but the hours are still the same;
21 you will have staff either working 12 hours or sometimes 24
22 hours. It still is asking too much of correction officers.

23 And what I would like to hear the city discuss today
24 is, is this the new normal, where basically close to a third of
25 their uniform staff are not going to be interacting with

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1 inmates on a given day and available to work? If that is the
2 case, then they need to plan accordingly, and we need to have a
3 plan for that. But we are not seeing, despite good faith
4 efforts by the department, suspensions of folks who have been
5 AWOL for many months. We still don't see the number
6 significantly decreasing. And the policy is still that
7 correction officers have unlimited sick leave. And we
8 understand the challenges that presents for the department, but
9 it is a reality.

10 Finally, as far as data, there is still -- the monitor
11 has talked about this -- an ongoing failure to adhere to basic
12 core security protocols and get very straightforward things
13 done. One example, back in September it was identified that
14 900 cell doors in RNDC, the facility that houses the youngest
15 inmates and others, 900 cell doors needed to be replaced.
16 According to the report submitted by the city on October 14,
17 300 of those doors have been replaced. They plan to replace
18 another 250 by February of 2022, and there was no deadline for
19 the other doors.

20 I am just bringing up this example because these are
21 simple things that raise serious concerns. If the department
22 cannot promptly fix inoperable doors of cells in the jails,
23 it's hard to expect things to improve dramatically no matter
24 what the good faith efforts of the monitors, they certainly
25 have put in hours and hours of time working with the department

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1 to get things done, but things still are not getting done
2 efficiently.

3 Just to conclude, two issues I would like to raise
4 with respect to the remedial order entered back in September
5 after we last appeared before your Honor.

6 We remain extremely frustrated by the lack of progress
7 that has been made in implementing the monitors'
8 recommendations to deal with the deficiencies in the
9 corrections expertise at the management level in the facility.
10 Your Honor alluded to the monitors' recommendation and what was
11 contemplated in the remedial order was to expand the criteria
12 for hiring facility leadership positions -- wardens, deputy
13 wardens -- so that the department could look outside the
14 uniform ranks to find the most qualified, experienced people to
15 run their jails. My understanding is that has reached a
16 roadblock. The city's position, I think, and I want to hear
17 from them today, and I would ask them to respond, is that there
18 are legal impediments, state and local laws, that prevent them
19 from hiring folks with expertise to run their jails outside of
20 the uniform ranks. So I think we would like to understand, is
21 the city saying that it is unable to do that, to hire outside
22 folks? Do they need your Honor to issue an order requiring
23 them to do that to remedy the constitutional violations that
24 are ongoing? Would the city consent to such an order? Those
25 are the issues that I think are very important, as we sit here

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1 today, that that initiative is stalled, as far as I understand
2 it, and we would just like to take this opportunity to get a
3 better understanding of what can be done to move that forward.

4 The other issue, and the city has addressed this a bit
5 earlier, was the recommendation to hire an outside expert to be
6 the security operations manager. We are pleased to hear today
7 that the city has firmly committed to hire such person or
8 people. We are happy to hear that. We understand that it's a
9 complex process to figure out the precise role and to find the
10 right candidate, but this is desperately needed. I would like
11 the city to address what a proposed time frame might be or a
12 time to report back to the Court as to what the role would be,
13 who will fill it, and what a timeline is for hiring that
14 person. Because as each day passes, more use-of-force
15 incidents happen, more slashings, more correction officers are
16 injured, and more staff are harmed. So we would like some
17 specifics on the plan to implement that recommendation today.

18 So the core recommendations of the monitor were to
19 bring in outside help. And we understand the consultant has
20 been hired to look at that particular issue of how to house
21 gang members in units most safely, but that is one small piece
22 of the overall need to infuse this department with much more
23 expertise in the basics of corrections, and that's where we
24 think we need to go from here. And if the city can't hire
25 people outside to bring them in, the government will need to

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1 consider with plaintiff class other alternatives to get past
2 these legal impediments.

3 Thank you, your Honor.

4 THE COURT: Thank you, Mr. Powell.

5 I will go back to Ms. Joyce on these questions before
6 I call on Ms. Werlwås so that we have the best information base
7 we can have before Ms. Werlwås speaks.

8 Actually, Ms. Friedberg has her hand up. So I will
9 call on Ms. Friedberg first and then Ms. Joyce.

10 MS. FRIEDBERG: Thank you, your Honor.

11 I just wanted to clarify one piece of information
12 mentioned by the government. I believe that the way in which
13 the monitor produced certain data led to a potential
14 miscommunication.

15 With respect to the fixing of the cell doors at RNDC,
16 the department has committed to fixing all 900 doors within the
17 facility. That does not actually mean that all 900 doors
18 within the facility are, in fact, inoperable. That certainly
19 is probably a lack of clarity in the way in which I produced
20 that report to the Court. So I just wanted to clarify that,
21 while not every door has been replaced, the goal of replacing
22 the doors is to ensure that there are doors that are less
23 likely to be manipulated. But that does not mean that because
24 they are replacing all 900 doors, that, in fact, those doors
25 are in fact inoperable. They just tend to be of an older type

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1 in which manipulation of that door could be more likely. And
2 so that is why the process of replacing doors is occurring
3 throughout the facility.

4 Right now the department does not even utilize every
5 cell door within RNDC. I, unfortunately, at this time don't
6 have data for you with respect to how many doors may be
7 inoperable at this given moment and whether or not they are in
8 use with an incarcerated individual. But I just did want to
9 clarify that our reporting out of the replacement of 900 doors
10 was not intended to reflect the fact that all 900 doors were
11 inoperable. So I apologize for that lack of clarity in our
12 communications to the Court and to the parties.

13 THE COURT: Thank you for that clarification.

14 So, Ms. Joyce, first, the status of the recommendation
15 to hire people from outside into warden positions.

16 MS. JOYCE: Well, your Honor, could I flip them
17 because I believe Ms. Friedberg is the one that would have the
18 best information about how long the timeline will take for the
19 security operations manager, which was one of the questions
20 Mr. Powell asked.

21 THE COURT: So that's the one that you want to start
22 with?

23 MS. JOYCE: Yes. Only because Ms. Friedberg just
24 spoke about how they are simultaneously on the path of
25 discussing the contours of the role, as well as candidates for

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1 the role depending on the contours. So I don't have a timeline
2 for when that will be completed. I think that timeline is best
3 within Mr. Martin and Ms. Friedberg's hands as to the
4 definition of the role and who they identify is appropriate.
5 Plus, they indicated that they would need to have conversations
6 with plaintiffs' counsel and the government. So I am not sure
7 how long they intend that to take. So that's not something
8 that's within my knowledge frame.

9 THE COURT: Understood. Thank you.

10 Ms. Friedberg, if you could take this in at least two
11 chunks. First, how long do you believe it will take to be
12 ready for the conversations with the government and plaintiffs'
13 counsel. And then I understand that you wouldn't be able to
14 project precisely how long those conversations would take, but
15 assuming that at some point that results in an agreement on a
16 strategy, how long do you think it would then take to implement
17 the strategy?

18 MS. FRIEDBERG: Sure, your Honor.

19 I have not fully vetted a timeline even with Mr.
20 Martin himself, so I am going to have to say that some of this
21 will be subject to some internal conferring after the fact, but
22 at least to advise the Court that certainly this is the highest
23 priority of the monitoring team. I would anticipate that
24 within the next two weeks -- we owe a report to the Court on
25 December 22 -- that we would be in a position to identify the

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1 status of the discussions with the city and then provide a
2 timeline from there.

3 One factor I must note that gives me some hesitancy
4 with committing to a timeline right now is that we are about to
5 enter into a new administration for the city. What impact, if
6 any, that may have on these discussions, especially given the
7 impact of this role, must be considered. I cannot in good
8 conscience ignore that fact right now. The city has remained
9 committed in discussing this role, but I think that ultimately
10 Mr. Martin and I will have to confer with respect to how long
11 it may take to ultimately flesh this out and the timeline, of
12 which I would propose that we share that in our next report on
13 December 22.

14 THE COURT: Thank you.

15 Ms. Werlwås, did you want to speak on the record? I
16 saw your mouth moving and you were muted. I didn't want to
17 skip over you.

18 MS. WERLWAS: Thank you, your Honor. My co-counsel is
19 here in the office with me, Ms. Simpson, and others are on the
20 line.

21 If we may briefly, your Honor, if now is appropriate.

22 THE COURT: Well, I wasn't about to call on you in the
23 ordinary course now. I thought you might have wanted to make a
24 comment on what Ms. Friedberg had said.

25 MS. WERLWAS: No, your Honor. Thank you.

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1 THE COURT: So I will go back to Ms. Joyce then on the
2 first question, which is the city's perspective on legal
3 liability at this point of hiring outside people into warden
4 positions.

5 MS. JOYCE: Yes, your Honor. Thank you.

6 Believe me, your Honor, there is nothing that we would
7 like more than to be able to easily bring in outside expertise
8 to the level of warden through chief of department, but the
9 current legal landscape prevents that. Unfortunately, I have
10 learned a lot more about employment law over the past couple of
11 months than I would have liked, and we have had extensive
12 discussions with Ms. Friedberg on this, but there are certain
13 civil service laws, state civil service laws, city
14 administrative code, correction law provisions, that prevents
15 the department from hiring outside of the current uniform ranks
16 for the uniform positions of warden through chief of
17 department. I have discussed with my colleagues and legal
18 counsel the options to get around those laws and it's not as
19 easy as the snap of a finger. My office engaged with the
20 state, and while there may be some wiggle room -- and, Ms.
21 Friedberg, we should continue those discussions -- I don't
22 believe that the state is willing to suspend those laws,
23 especially when we don't have any candidates for the position.
24 It might be different if we had people who were interested in
25 coming to the department to be wardens, but so far

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1 conversations have been a little fruitless.

2 Additionally, I did speak to my colleagues about the
3 potential for your Honor to just sign an order suspending the
4 laws that would then allow us to hire from outside, and it's
5 not as easy as that either. I was told that there are
6 significant separation of powers questions. There are
7 federalism concerns with this option. There are public policy
8 concerns. So those were all considered in our analysis that
9 it's just not something that we can do right now with the laws
10 the way that they are.

11 I see Mr. Powell has his hand raised. I am happy to
12 have a conversation offline with Mr. Powell and Ms. Werlwais
13 with those who could better explain the interplay between the
14 civil service laws, the admin codes, our inability to hire, and
15 what the obstacles are.

16 THE COURT: Thank you, Ms. Joyce.

17 Mr. Powell.

18 MR. POWELL: Your Honor, I would just like to point
19 out that, in our view, and I think the legal counsel for the
20 class may add to this, but under the PLRA, it's our view that
21 your Honor could enter an order requiring the city to hire
22 outside folks if the federal law requires such relief, which we
23 believe it does. The relief is necessary to correct the
24 violation of a federal right, which given the monitors'
25 detailed, repeated over the years, documentation of the lack of

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1 quality supervision in these facilities, we think that criteria
2 can be met, and that no other relief will correct the
3 violation. I am just repeating what is in 18 U.S.C.
4 3626(a)(1)(B).

5 So we think that order is within what your Honor could
6 authorize. We initially would want to engage with the city,
7 and I think this question has been posed to the city before
8 this call, and I understand it's a complex one and Kim has to
9 talk to her client, but our first question is whether the city
10 would consent to such an order that would, in essence, waive
11 any applicable state or local law that would prevent them from
12 making these hires.

13 So that is an issue we think is ripe for discussion.
14 We want to move forward on that issue. I am happy to talk to
15 the city and their experts. But ultimately, even if their view
16 is that the law, as a labor law matter, poses an impediment, we
17 do think that your Honor can issue an order, given these
18 egregious conditions, that can basically waive those laws.

19 Just one other point. I am not sure what the city or
20 the department has done with outreach to find folks who may be
21 qualified. I am not doing the outreach, I don't know, but if
22 the question is getting candidates and then presenting them to
23 the state and having laws waived based on specific candidates,
24 then I wonder what efforts the city has made to identify those
25 candidates across the country. I didn't realize those outreach

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1 efforts have been made, but if there are candidates, I think
2 that would strengthen the position if they actually selected
3 candidates who were interested and qualified.

4 Thank you.

5 THE COURT: Ms. Werlwas has her hand up now, and so I
6 will call on her before going back to Ms. Joyce.

7 MS. WERLWAS: Your Honor, my apologies, but the
8 mechanical raise-hand function does not seem to be working.

9 THE COURT: The physical one worked just fine.

10 MS. WERLWAS: Your Honor, for the order of the
11 conference, I did want to contribute to this discussion very
12 specifically about this particular topic and can confine my
13 remarks just to this right now or talk more generally.

14 THE COURT: I would like to be able to close the loop
15 on an action and consultation plan with respect to the wardens
16 issue, and so I would invite your comments on that now. I will
17 go back to Ms. Joyce about a meet-and-confer and sharing
18 information moving forward.

19 MS. WERLWAS: Thank you. This can be brief.

20 We fully endorse what the government just spoke about
21 the paths forward. We, as the city noted, have had extensive
22 conversations with the monitor about this topic, but I profess
23 some deep concern that we certainly, despite months of
24 discussing this issue, have yet to receive anything but a
25 rather cursory explanation of their legal position. That is

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1 not to say we necessarily disagree with their views on the
2 application of state and local laws. We simply just don't know
3 what they are.

4 That being said, what we think is critical to come out
5 of today understanding is, as Mr. Powell noted, using the
6 provisions of the PLRA that specifically understand and
7 contemplate that courts in this position, needing to implement
8 relief, prospective relief, that does intersect with state and
9 local law, have a path forward. It's a statutory path that
10 Mr. Powell identified. We think abundantly clear that the need
11 for this relief is well established on this record. The
12 question is whether the city will consent to seeking an order
13 from your Honor, as we have negotiated and approached your
14 Honor with negotiated stipulated relief to date, or whether
15 that is not a path forward. And we think it's very critical
16 that we understand their position on whether or not they will
17 join us in seeking a path forward or whether that is something
18 that we will have to seek from the Court through a contested
19 motion.

20 THE COURT: Thank you, Ms. Werlwås.

21 Ms. Joyce.

22 MS. JOYCE: Yes, your Honor. Thank you.

23 If I may make a proposal, because as Mr. Powell and
24 Ms. Werlwås alluded to, I will need to speak to stakeholders in
25 my office about their proposal. I think some of our concerns

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1 internally was also about the Court's willingness to endorse
2 such request if it was to be brought before the Court.

3 So I believe the monitoring team has another report
4 due on the 22nd. So I would propose that I engage with my
5 stakeholders on the specific question that Mr. Powell and Ms.
6 Werlw was raised about whether or not we would consent to an
7 order under 18 U.S.C. 3626(a)(1)(B) on this specific topic,
8 that I have that conversation with my stakeholders and report
9 back to the parties, and that we can inform the Court on or
10 about December 22 about whether or not we consent to that
11 application, oppose the application, or whether or not there is
12 some other path forward. And during that time I can also
13 endeavor to do my best to explain or get colleagues on the
14 phone to help explain our views on the legal impediments to
15 Mr. Powell and Ms. Werlw was.

16 THE COURT: So is the December 22 time frame
17 coincident with a reporting date? I'm sorry. I haven't
18 memorized the calendar at this point. So that would be 20 days
19 out from now.

20 MS. JOYCE: I think that's when Ms. Friedberg will be
21 submitting the third remedial order report on the first and
22 second remedial order.

23 THE COURT: Ms. Friedberg is nodding yes.

24 MS. FRIEDBERG: It's the third remedial order report
25 about the first, second, and third remedial orders.

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1 THE COURT: Thank you.

2 Ms. Werlwash.

3 MS. WERLWAS: Your Honor, just for clarity, I am not
4 certain that I understand the city's position or proposal about
5 what should transpire. Is it that by December 22 the city will
6 inform the parties of their consent to an order? And if so,
7 why do we need to wait until December 22? It seems, if we
8 could get their position, then we could report to the Court by
9 December 22 whether the issue has been resolved or whether it
10 will need motion practice.

11 MS. JOYCE: Your Honor, that was my intent, to inform
12 the Court in the December 22 status report, which would thereby
13 presume that Ms. Werlwash and Mr. Powell would have gotten our
14 positions in advance of that so Ms. Friedberg can inform the
15 Court on December 22.

16 THE COURT: So you anticipate providing more
17 information of the basis of your position, doing your internal
18 consultations, and informing Mr. Powell and Ms. Werlwash, and
19 presumably the monitoring team, as to whether the city
20 anticipates being in a consent posture sufficiently in advance
21 of the December 22 reporting date that that December 22 report
22 will be able to reflect the parties' respective positions as to
23 whether we are heading in a consent direction or whether we
24 would be heading in a litigation direction, and I guess in
25 either case, propose mechanics and timetable. Is that a fair

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1 summary of what you are proposing, Ms. Joyce?

2 MS. JOYCE: Yes, your Honor.

3 THE COURT: Thank you.

4 Mr. Powell has his hand up.

5 MR. POWELL: If I may just follow up on that. I
6 understand it's a complex issue. It is arising out of a
7 recommendation the monitor made as early as May of this year,
8 but I understand the city has to confer. My only question is,
9 if that is the proposal, given the realities of the timing here
10 and the end of this current administration, whether it will be
11 feasible, if the city is in a consent position, to execute a
12 consent order and have appropriate sign-off before the change
13 in the administration and how that would play out.

14 I guess our preference would be, if there is consent
15 from the city, that's obviously up to them, that December 22 be
16 set as a deadline to submit an actual proposed order. It will
17 be fairly straightforward hopefully. So we would just request
18 that the deadline be December 22 to actually submit a proposed
19 order. If there is no agreement, obviously there is no
20 agreement, and then the monitor would set forth the parties'
21 positions. That would be my respectful proposal to your Honor
22 just given the timing here.

23 THE COURT: So the goal would be, in your proposal, a
24 consent order, if that's going to happen, by December 22. And
25 in the absence of the consent order, the joint report, which

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1 would in your view then anticipate litigation given the time
2 frame. Am I hearing you correctly?

3 MR. POWELL: Yes, your Honor. I think it would be the
4 monitors' report, they would set forth the parties' positions,
5 like they have done in prior instances with your Honor, and
6 then we would evaluate how to go from there, whether it's
7 litigation. But it would set forth either as a consent order
8 for you to sign off, if you deem appropriate, or the parties'
9 positions if they don't reach a consent order. That would be
10 our proposal.

11 THE COURT: Ms. Joyce, considering the timing and the
12 change of administrations, that seems certainly the most
13 practical goal from the perspective of being able to get
14 something on the books. Is that a goal that you can undertake
15 now and to which I can express an expectation and direction
16 coming out of this conference?

17 MS. JOYCE: Yes, your Honor. Because if it's going to
18 be a yes, it should be fairly easy to put together a consent
19 order. I think it will be fairly easy to meet that December 22
20 date, to have a consent order if it's going to be on consent.

21 THE COURT: So we will say proposed consent order, if
22 any, by December 22 -- of course, if it does go quickly, there
23 is nothing that would prevent you from submitting it before
24 December 22 -- regarding outside leadership for facilities.
25 And in absence of consent order, positions to be included in

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1 the monitors' December 22 report.

2 Is that language acceptable, Ms. Friedberg?

3 MS. FRIEDBERG: Thank you, your Honor. I just had one
4 question with respect to the fact, if the parties are in a
5 position to submit a consent order, will you be requesting any
6 information from the monitor with respect to other prior
7 orders? There have been times when you have requested a
8 declaration. I just thought I might as well ask these
9 logistical questions now. Certainly, should you require one,
10 we would be happy to furnish one. I don't know if it will be
11 necessary in this case or not, but I thought we might as well
12 think that through while we are here as well.

13 THE COURT: I appreciate you raising the question
14 because these are fast-moving discussions. I haven't thought
15 that all the way through, but it certainly wouldn't be
16 something detrimental to the process. So my answer to you at
17 this point would be, yes, I would request a monitors'
18 declaration in support of the consent order.

19 Ms. Werlwash, you raised your physical hand.

20 MS. WERLWAS: Your Honor, just to offer our view,
21 which is certainly that there are efficient ways we think in
22 this case for the parties to agree upon or to stipulate, for
23 example, to facts that might minimize the burden on the
24 monitoring team to reproduce by declaration many of the facts
25 that we believe would support this order. We think those are

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1 already the facts that the monitoring team has amply laid out.
2 We understand the formal mechanism of essentially taking those
3 facts into admissible evidence is what is at issue, but may we
4 simply offer that we are happy to talk with the monitoring team
5 and the parties about even more streamline mechanisms that
6 would provide the record the Court needs?

7 THE COURT: So a consent order that would incorporate
8 recitals by way of stipulation obviating the need for a
9 separate monitor declaration?

10 MR. WERLWAS: Yes.

11 THE COURT: The Court would welcome that if the
12 parties are able to do that.

13 Someone called Jeff had had a hand raised, but then
14 that hand went away.

15 I am sorry. That was you.

16 MR. POWELL: We know there is a lot on the plate of
17 the monitor, and if they want to submit a declaration shortly
18 after the consent order is submitted, I think that would be
19 perfectly fine. My concern was more to have sign off. If we
20 are going to get sign off before the change in administration,
21 I do think I would support the monitor submitting a
22 declaration, given the labor-related issues here and the legal
23 issues and the factual findings that need to go with this type
24 of relief, but certainly open to whatever time frame for that
25 declaration that works for the monitor's team.

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1 THE COURT: I will just ask you all to work together
2 in the most efficient way. And, of course, if the monitors'
3 declaration would come afterward, then that would also affect
4 the Court's ability to act on the proposed consent order. So I
5 think it's everybody's goal, and certainly in the interests of
6 all of the people affected by this, for the process to go as
7 smoothly and simply and quickly as it can, if it is going in
8 the direction of a consent order.

9 Ms. Friedberg, you have your electronic hand up.

10 MS. FRIEDBERG: I just want to mention I very much
11 appreciate Mr. Powell's consideration of our time, but should a
12 declaration be needed by the 22nd, we certainly would be in a
13 position to furnish it on that date.

14 To the extent that we can minimize negotiation given
15 the short time frame, I certainly would support that. I think
16 the development of a declaration has always been one that the
17 monitoring team can efficiently provide. So I just would
18 strongly recommend for the parties, with respect to my
19 experience negotiating these matters, to minimize what needs to
20 be negotiated in order to ensure we can be in a position to
21 have a consent order within 20 days, that we do that. So if
22 that means that the monitor shall provide a declaration, we
23 certainly would be happy to do that and could easily put one
24 together.

25 THE COURT: Very good. Thank you.

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1 Ms. Joyce, did you want to say anything further before
2 I return to Ms. Werlwas for her remarks?

3 MS. JOYCE: No, thank you, your Honor.

4 THE COURT: Thank you, Ms. Joyce.

5 Ms. Werlwas.

6 MS. WERLWAS: Thank, your Honor.

7 This has been a very helpful conversation and
8 discussion so far. We do want to make clear in our remarks
9 that we recognize there has been no dearth of industriousness
10 or activity on the parts of the city, the monitor, and the
11 parties since we all met last. And although the specific
12 topics arising from the remedial orders that we are discussing
13 today, which are of course but a subset of the relief that is
14 necessary to correct the violations in this case, is a limited
15 approach, we want to make clear that we do think this kind of
16 prompt and sustained attention that we are giving these
17 specific issues today is critical. We are very concerned about
18 ensuring that the relief that these remedial orders secured to
19 the plaintiff class is faithfully and fully implemented. And
20 to that end, we think that today's opportunity to exchange
21 information is critical to charting the path forward.

22 In particular, we welcome the information that the
23 monitoring team has provided concerning its views of progress
24 made to date. We absolutely welcome progress. We think that
25 decisions about paths forward would benefit from some further

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1 explication or updates of the facts that were previously
2 presented to the Court, such as, for example, the effect of the
3 city's inability to ensure that its workforce shows up to work
4 and how that impacts its ability to comply with the
5 court-ordered obligations in this case.

6 To be sure, we do understand today the facts are
7 highly dynamic and the relief is highly dynamic. Indeed, just
8 yesterday, we received a report from one of our clients who we
9 represent in their criminal matter, who has been in the intake
10 unit at GRVC, or was in the intake unit at GRVC over that
11 Thanksgiving week, from Tuesday until Saturday, transferred to
12 then VCBC, and had been there for five days in intake since.
13 These are the kind of fluid, quickly moving facts about
14 compliance with the remedial order that necessarily mean
15 whatever we all present today is just a snapshot in time but
16 that we hope the city can address today.

17 We don't want the factual updates to subsume our
18 recognition that, despite the activity and the enormous
19 activity around these issues as the October report, the
20 situation remains dire. We welcome the progress, though,
21 frankly, from where we were in August and September, there is
22 almost no room to go but up. And even where we are now, the
23 facts that Mr. Powell presented to the Court demonstrate to us
24 that there is a persistent and quite horrific pattern of
25 violence persisting in our jails. Our plaintiff class members

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1 are being sprayed. They are being beaten on a daily basis.

2 This is rendering even very short stays in custody traumatic,
3 violent, and life threatening.

4 The remedial measures that we are discussing today are
5 unequivocally both necessary and important to obtaining
6 progress in abating these violations, but we must note that the
7 stubborn fact remains that six years into this case, the very
8 harms that we have all sought to abate in entering this consent
9 judgment have only gotten worse. And the current approach, the
10 six years of initiatives that have been pursued, with best
11 efforts and great dedication, have not corrected the
12 constitutional violations.

13 From the presentations today, it appears to us that
14 with respect to how to move forward on the issues we have
15 discussed so far, most particularly, the external hiring that
16 has been the principal focus of the conversation thus far, we
17 await and will continue conversations with the monitoring team
18 and the city about what the proposed relief will look like, in
19 particular, a security monitor. We think it's premature
20 frankly for us to have a significant view on that proposal
21 because it still is very much in formation, and we look forward
22 to learning more so that we can understand what relief that
23 could secure and what it leaves essentially uncovered, if you
24 will. And we look forward to hearing more from the city, in
25 particular, about what points of agreement there are, the role

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1 a security manager would play, and where this relatively robust
2 proposal is problematic for the city. We, quite frankly, don't
3 know what their view is on what that proposal intends to build
4 out. But we expect that the conversations that we will have
5 with the city and the monitors over the next few weeks will
6 provide some further information from which we can know where
7 to go forward.

8 We have looked forward to discussing any particular
9 issues on this agenda, particularly the ones also that we have
10 not had an opportunity to address as a group discussion
11 regarding compliance with the intake requirements, or the
12 updates on the staffing that were principal focuses of the last
13 conference, and we welcome that opportunity. But we also look
14 forward to the conversations that we will have over the next
15 few weeks with the parties and focusing as well on what we need
16 to do to immediately address the harm that is being visited
17 every day on the plaintiff class.

18 THE COURT: Thank you, Ms. Werlwais.

19 Today we are running into a problem of time, as this
20 conference was allocated an hour and a half. I think that we
21 have made very, very important progress with pinpointing both a
22 process and time frame for the further development of
23 information about the security position and that being shared
24 with the government and the plaintiffs' class, and also,
25 importantly, the time frame for rapid, focused and action on

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1 consent approach to the outside hires for the uniformed
2 position, if that's going to be feasible.

3 I will now hear from Ms. Friedberg before I make a
4 suggestion as to how to proceed.

5 So Ms. Friedberg.

6 MS. FRIEDBERG: Thank you.

7 I just wanted to share with the Court two pieces of
8 information that may impact how you think we should move
9 forward. One with respect to staffing, the other with respect
10 to intake. Just an overarching comment that the monitoring
11 team has engaged a nationally recognized expert to conduct a
12 staffing analysis. That began in July. A very short summary
13 of that work to date will be included in the twelfth monitors'
14 report that will be filed on December 6. Additional work is
15 needed before that complex project is completed. It certainly
16 overlaps with a lot of the work with respect to absenteeism,
17 but neither one of these things can be seen in a vacuum. The
18 way in which staff may or may not be coming to work, but also
19 how they are being deployed, those are kind of mutually
20 connected, and so that work does remain, just to give you some
21 additional context with respect to staffing.

22 With respect to intake, I will note that the
23 monitoring team has seen progress in that area. There are sort
24 of two different issues with respect to intake. One, the use
25 of intake for new admissions, and the rest what you would refer

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1 to as either inter- or intra-facility transfers. The
2 monitoring team recently received some information, both with
3 respect to some stays for new admissions that go beyond the
4 time period allotted; separately, we have received some
5 information with respect to individuals that are in intake
6 longer than 24 hours in the bucket of inter/intra-facility
7 transfer. Those are tracked and managed both a little
8 differently, that's why I separate those out. We are going to
9 review that information, but just to echo the sentiments of Mr.
10 Martin, certainly what we have seen with respect to processing
11 and intake overall, there has been a vast improvement from what
12 ultimately brought about the conditions for the requirements in
13 the second remedial order, not to take away that there is much
14 more work to be done, but I did just want to provide the Court
15 with that brief update before we ended today.

16 THE COURT: Thank you, Ms. Friedberg.

17 What I suggest -- I am sorry. Mr. Powell.

18 MR. POWELL: I was just going to note very briefly
19 that the one area in the security initiatives in the September
20 order that we were here to discuss, there was a requirement
21 that the 24-hour cap does apply to, as Ms. Friedberg said, both
22 new admissions and intra-facility transfers. We do have
23 serious concerns with the report of the monitor noting the
24 system to track the time of an inmate's stay in an intake
25 facility during the intra-facility, and just to explain what

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1 that is. It said if it's a new admission, it's someone who is
2 in the jail, needs to be removed, maybe they were involved in
3 an incident, they are put in intake. It seems, based on the
4 monitor's reporting, that there still is no reliable system to
5 track the time that inmates stay in intake. That was required
6 by the remedial order. It seems like that has not been
7 complied with. We don't have to do it now, but we are
8 interested in the city's progress on making sure, if they can't
9 comply with the requirement to cap the period of 24 hours, if
10 they can accurately track the period. So that is one other
11 concern in the remedial order that we wanted to flag for the
12 Court. Sorry to interrupt, your Honor.

13 THE COURT: Not an interruption. An important
14 interjection.

15 So what I was going to suggest is that, there is quite
16 a remaining agenda, but that you meet and confer offline on the
17 specific concerns and data points that if we had more time we
18 would have been able to discuss now. See if you can either
19 identify sufficient progress so that another specific proposal
20 doesn't have to be brought to the Court, or if not, formulate
21 specific issues to take up with the Court. And in connection
22 with the December 22 report, or before that as may be
23 appropriate, let the Court know whether you believe another
24 near-term conference to continue some of these discussions is
25 necessary or whether you are -- I will put it that way. If

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1 you're making sufficient progress in the meet-and-confer, I
2 won't put the burden on you of making a "we don't need a
3 conference" report to the Court. But if you do believe that
4 you need a conference, then we will set something up. And I am
5 going to be getting the twelfth monitoring report and the
6 December 22 report, and I am hoping a consent order that
7 addresses the outside hiring into uniform positions, or at
8 least knowledge of what needs to be the path forward on that
9 issue.

10 Ms. Werlwas.

11 MS. WERLWAS: Your Honor, we welcome that approach and
12 certainly will continue to meet and confer immediately to
13 resolve the issues, if possible, that are on the agenda.

14 With respect to your questions about what further
15 action may be needed, I did simply think it would be remiss if
16 we did not note our view as plaintiffs that even if there is a
17 resolution of the specific issues that are the topics for
18 today's conference, we do simply want to raise our concern that
19 we do believe that further proceedings relatively soon or
20 further conference with the Court may be necessary, because in
21 our view the need for relief exceeds the scope of this
22 particular remedial order and the issues that we were seeking
23 to resolve today. And we do not want to leave with the
24 impression that we think that the resolution of these
25 particular issues alone will set us on the entire course needed

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1 going forward, and would welcome certainly discussing among the
2 parties, and, if necessary, to seek the Court's guidance on the
3 ways in which we can proceed given what, in our view, appears
4 to be the city's inability to resolve the problems and the
5 questions of what further remedies, beyond the remedies we are
6 discussing today, whether it is receivership, whether it is
7 changing the parameters of the appointees that are being
8 discussed today, are necessary. So we did not want to leave
9 the Court with the impression that we think that this
10 meet-and-confer will resolve all of the matters that have
11 brought us to the Court today.

12 THE COURT: Thank you. While I am very optimistic
13 about the meet-and-confer, I did not view it as something that
14 would solve all of the problems going forward, and the monitor
15 hasn't suggested that either. The monitor has suggested a
16 plan, a sequenced plan of action, and has identified what the
17 monitor believes to be fundamental problems that need to be
18 addressed in order to be able to effectively move on the many
19 other important and immediate, if you will, issues that have to
20 be addressed for the implementation of the relief that has
21 already been ordered and, further, to ameliorate the
22 conditions. And so, that is to say that I am hearing, I think,
23 all around here that there is work going on, there is work that
24 is clearly agreed to be necessary, that there is deep and
25 appropriate concern about the conditions in which the inmates

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1 are living and the staff are working, and there may be
2 disagreements about the particular sequence of activities or
3 whether very specific things should be addressed in a specific
4 way or in a different way in the short-term.

5 So as you meet and confer, work collaboratively, as
6 you have done, and I want to commend you all for doing that,
7 and commend particularly the monitoring team for their
8 leadership and their creativity in proposing and undergirding
9 progress toward solutions and accountability. There is much
10 more to be done. So be as specific on questions or proposals
11 that you wish to introduce to this mix as you can be, so that
12 your discussions can be focused and productive, and let me know
13 when you think it is necessary and appropriate to come back
14 together for another conference such as this, whether it's
15 before or after the upcoming winter holidays. But I will
16 certainly look forward to receiving the two reports that we
17 have talked about, and I know that I am leaving these specifics
18 and ongoing discussions in the hands of people who are deeply
19 concerned, deeply talented, and all very, very much focused on
20 the conditions that are being faced by everyone involved with
21 Rikers and the city jails now. So I am not leaving this
22 conference believing in any way, or thinking it is in any way
23 appropriate for there to be stasis or thinking that there will
24 be inactivity. I expect that there will be ongoing, focused,
25 effective and productive activity, and I thank you all for

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1 that.

2 Is there anything else that we should discuss before
3 we adjourn? It's now a little after 11:30.

4 Thank you. Seeing no hands raised, I again thank you
5 all. I look forward to the submissions. I wish you progress
6 and personal safety and good health.

7 Thank you, all.

8 (Adjourned)

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